



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/550,488	08/21/2006	Anders Nykjaer	NYKJAER2	5401
1444 7590 08/03/2010 BROWDY AND NEIMARK, P.L.L.C. 624 NINTH STREET, NW SUITE 300 WASHINGTON, DC 20001-5303				
EXAMINER				
JAGOE, DONNA A				
ART UNIT		PAPER NUMBER		
1619				
MAIL DATE		DELIVERY MODE		
08/03/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/550,488

Applicant(s)

NYKJAER, ANDERS

Examiner

Donna Jagoe

Art Unit

1619

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 62-87 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 62-87 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/CD)
Paper No(s)/Mail Date ____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

DETAILED ACTION

Election/Restrictions

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 62-80, drawn to the method for the prophylaxis and/or treatment of induced cell toxicity comprising administering compound (VI).

Group II, claim(s) 81-84 and 87, drawn to a compound as defined by formula (VII) and a method for prophylaxis and/or treatment of induced cell toxicity comprising administering a compound as defined in claim 81.

Group III, claim(s) 85 and 86, drawn to a combination medicament comprising a compound of claim 62 and a therapeutic agent for simultaneous, separate or sequential use for induced cell toxicity therapy.

The groups of inventions listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

The special technical feature of the group I invention, the method for the prophylaxis and/or treatment of induced cell toxicity comprising administering a compound of formula (VI) is not required by the group II invention whose special technical feature is a compound and method of use for cell toxicity as defined by formula (VII).

The special technical feature of the group III invention, the combination of the medicament of formula 62 and a therapeutic agent is not required by the group I and group II inventions because they are not combined with an additional therapeutic agent.

This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

1. If elected, the compound of formula (VI) selected from 3-methylamino-1-(4-methylpiperazino)-2-propanole, 4-piperazinoaniline, 1-(3-chlorophenyl)piperazine diHCl (m-CPP), piperazin-2-one-HCl, 2-[4-(2-aminoethyl)piperazin-1-yl] ethylamine, piperazine anhydrous, 2,4-diamino-6-phenyl-1,3,5-triazine, 3,5-diamino-1,2,4-triazole, 2,5-piperazinedione, piperazine, and piperazin-2-one-HCl, 1-(2-pyrimidyl)piperazine dihydrochloride, 2-[4-(2-aminoethyl)piperazin-1-yl] ethylamine, 3-methylamino-1-(4-methylpiperazino)-2-propanole, piperazine, 1,7-diaminoheptane, 1,2-diaminoethane, 1,4-diaminobutane, 1,6-diaminohexane, and 1,5-diaminopentane.

2. If elected, one single species of the compound of formula (VII).

Applicant is required, in reply to this action, to elect a **single species** to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise require all the limitations of an allowed generic claim. Currently, the following claim(s) are generic: 62, 72, 78, 81 and 84-87.

The claims are deemed to correspond to the species listed above in the following manner:

Claims 62, 72, 78 and 85 to the species of formula (VI)
Claims 81, 84, 86 and 87 to the species of formula (VII)

REQUIREMENT FOR UNITY OF INVENTION

As provided in 37 CFR 1.475(a), a national stage application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept ("requirement of unity of invention"). Where a group of inventions is claimed in a national stage application, the requirement of unity of invention shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression "special technical features" shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.

The determination whether a group of inventions is so linked as to form a single general inventive concept shall be made without regard to whether the inventions are claimed in separate claims or as alternatives within a single claim. See 37 CFR 1.475(e).

WHEN CLAIMS ARE DIRECTED TO MULTIPLE CATEGORIES OF INVENTIONS

As provided in 37 CFR 1.475(b), a national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn only to one of the following combinations of categories:

(1) A product and a process specially adapted for the manufacture of said product; or

(2) A product and process of use of said product; or

(3) A product, a process specially adapted for the manufacture of the said product, and a use of the said product; or

(4) A process and an apparatus or means specifically designed for carrying out the said process; or

(5) A product, a process specially adapted for the manufacture of the said product, and an apparatus or means specifically designed for carrying out the said process.

Otherwise, unity of invention might not be present. See 37 CFR 1.475(c).

A telephone call to the attorney is not required where: 1) the restriction requirement is complex, 2) the application is being prosecuted pro se, or 3) the examiner knows from past experience that a telephone election will not be made, see MPEP Sect. 812.01. Applicant is advised that the reply to this requirement to be

complete must include (i) an election of a species or invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected invention or species.

Should applicant traverse on the ground that the inventions have unity of invention (37 CFR 1.475(a)), applicant must provide reasons in support thereof. Applicant may submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. Where such evidence or admission is provided by applicant, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donna Jagoe whose telephone number is (571) 272-

0576. The examiner can normally be reached on Monday through Friday from 8:00 A.M. - 4:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yvonne (Bonnie) Eyler can be reached on (571) 272-0871. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/YVONNE L. EYLER/
Supervisory Patent Examiner, Art Unit 1619

Donna Jagoe /D. J./
Examiner
Art Unit 1619

July 28, 2010